

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 18-43751-tjt

**Anthony D. Barnard and
Tracie L. Barnard,**

Chapter 7

Debtors.

Hon. Thomas J. Tucker

**MOTION TO DISMISS CASE
UNDER 11 U.S.C. §707(b)(3)**

Daniel M. McDermott, United States Trustee, states as follows:

1. The Court has jurisdiction over this matter based on 28 U.S.C. § 1334(a) and (b), 28 U.S.C. § 157(a) and (b)(1) and 28 U.S.C. § 151. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B). This Motion is filed under 11 U.S.C. § 707(b)(3). A proposed Order is attached.
2. The Debtors filed this Chapter 7 on March 19, 2018.
3. The Debtors' obligations are primarily consumer debts.
4. The Debtors scheduled nonpriority unsecured debt of \$206,667.86 of which \$109,425.00 is student loan debt. The Debtors also have \$98,709.48 in unpaid domestic support obligations.

Abuse under 11 U.S.C. § 707(b)(3)(B) - Totality of the Circumstances

5. The Debtors' Schedule I lists gross monthly income of \$4,970.26 or \$59,643.12 annually. But, Schedule I does not include income from the co-debtor husband as he had started a "new job" recently before the filing.

6. The U.S. Trustee has asked for amendments to be made to Schedule I to reflect Mr. Barnard's income, however, after several weeks, no amendment to reflect his income has been made.

7. The Debtors have produced copies of Mr. Barnard's paystubs from March 5, 2018 through April 15, 2018. The April 15, 2018 pay advice showed year-to-date gross income of \$6001.60, or almost \$3,000.00 per month.

8. While Schedule J shows a monthly deficit of \$496.43, Mr. Barnard's income has not been taken into account.

9. The Debtors have the ability to propose a plan under chapter 13 which could fully pay the priority debts.

10. And, the Debtors have unsupported (as "continuing") charitable contributions of \$400.00 per month, and they show \$250.00 per month for cigarettes, and \$175.00 per month for entertainment. Even these expenses could be reduced to generate more funds for unsecured creditors.

11. Debtors have not provided 2017 tax returns to the U.S Trustee.

12. The Debtors' attempt to obtain relief under Chapter 7 when they can make a meaningful repayment to creditors in a Chapter 13 plan constitutes an abuse of the provisions of Chapter 7.

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

By /s/ Leslie K. Berg
Trial Attorney
U.S. Dept. of Justice
Office of the U.S. Trustee
211 West Fort St - Suite 700
Detroit, Michigan 48226
(313) 226-7950
Leslie.K.Berg@usdoj.gov

Dated: July 24, 2018

UNITED STATES BANKRUPTCY COURT
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In re:

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**Anthony D. Barnard and
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Debtors.

ORDER DISMISSING CHAPTER 7 CASE

This case is before the Court on the Motion of the United States Trustee for an order dismissing the above-captioned case under the provisions of § 707(b)(3) of the Bankruptcy Code.

No timely response or objection to the Motion has been filed. The Court, has considered the pleadings, and finds good cause to enter this Order.

IT IS ORDERED that the Motion is granted, and this case is **DISMISSED**

UNITED STATES BANKRUPTCY COURT
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NOTICE OF MOTION TO DISMISS CHAPTER 7 CASE

The United States Trustee has filed papers with the court to dismiss the above entitled case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.).

If you do not want the court to dismiss the case, or if you want the court to consider your views on the motion, **within 14 days**, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

U.S. Bankruptcy Court
211 West Fort Street
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to: Leslie K. Berg
Office of the United States Trustee
211 West Fort Street, Suite 700
Detroit, MI 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

By /s/ Leslie K. Berg
Trial Attorney
Office of the U.S. Trustee
211 West Fort St - Suite 700
Detroit, Michigan 48226
(313) 226-7950
Leslie.K.Berg@usdoj.gov

Dated: July 25, 2018

¹ Response or answer must comply with F.R.Civ.P. 8(b), (c) and (e).

UNITED STATES BANKRUPTCY COURT
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In re:

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Chapter 7

Hon. Thomas J. Tucker

Debtors.

**MEMORANDUM OF LAW IN SUPPORT OF THE
UNITED STATES TRUSTEE'S MOTION TO
DISMISS CASE UNDER 11 U.S.C. §707(b)(3)**

Dismissal under 11 U.S.C. § 707(b)(3)

If the presumption of abuse does not arise or is rebutted, this Court may nevertheless dismiss Debtor's case if the totality of the circumstances of Debtor's financial situation demonstrates abuse.

Section 707(b)(3) provides:

In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(I) does not arise or is rebutted, the court shall consider -

(B) [whether] the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

Debtors' Failure to Account for Co-Debtor's Income Shows That Debtors Can Propose a Chapter 13 Plan

The Debtors in this case have yet to amend Schedule I to provide detail of the co-debtor husband's income. From paystubs provided to the U.S. Trustee, it appears

that the Debtor Mr. Barnard makes about \$3,000.00 per month in gross income. Since the Debtors show a deficit of about \$496.00 per month, they would have sufficient funds to make significant payments into a chapter 13 plan after accounting for Mr. Barnard's income.

CONCLUSION

For the reasons stated above, the Court should dismiss this case as an abuse of Chapter 7.

Respectfully submitted,

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

By /s/ Leslie K. Berg
Trial Attorney
Office of the U.S. Trustee
211 West Fort St - Suite 700
Detroit, Michigan 48226
(313) 226-7950
Leslie.K.Berg@usdoj.gov

Dated: July 25, 2018

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Chapter 7

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Hon. Thomas J. Tucker

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2018, I served copies as follows:

1. Documents Served: *Motion to Dismiss, Notice of Motion,
Memorandum and Certificate of
Service.*
2. Served Upon:
Anthony D. Barnard
Tracie L. Barnard
1309 Woodglen Avenue
Ypsilanti, Michigan 48198-6221
3. Method of Service: First Class Mail

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9

By: /s/ Leslie K. Berg
Leslie.K.Berg@usdoj.gov
Trial Attorney
Office of the U.S. Trustee
211 West Fort Street - Suite 700
Detroit, Michigan 48226
313-226-7950

Dated: July 25, 2018